In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 411

J. R. MASON,
Petitioner,
vs.
EL DORADO IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

J. RUPERT MASON,
1920 Lake Street, San Francisco, California,
Petitioner in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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EL DORADO IRRIGATION DISTRICT, *Respondent.*

PETITION FOR A REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now petitioner J. R. Mason *in propria persona* and respectfully submits this petition for a rehearing in the above entitled cause.

There is presented in this petition a constitutional question of national importance to the sovereign rights of the States, and to the very survival of the doctrine

of immunity, as that doctrine has been adhered to steadfastly by this Court for more than 150 years. There exists serious conflict and confusion regarding the scope of 11 U.S.C.A. 401-404 among the Courts below, which needs resolving, and which conflicts can only be resolved by this Court.

Respondent cites no State decisions at all, in support of his contentions, and does not argue that the doctrine of immunity was overruled or even modified by this Court in *U. S. v. Bekins,* 304 U. S. 27.

Petitioner respectfully submits that the doctrine of immunity adhered to in *Ashton v. Cameron County,* 298 U. S. 513, was reaffirmed by this Court in *Graves v. New York,* 306 U. S. 466, 477, *Arkansas Corp. v. Thompson,* 312 U. S. 673, and again in *Faitoute v. Asbury Park,* 316 U. S. 502.

This Court was not called on to consider this basic constitutional question in the *Bekins* case, supra, because the facts presented in that case did not raise the question as an actual controversy.

Respondent makes no attempt to refute our statement that "The applicable State laws creating the powers and duties of Respondent and the property rights of Petitioner as a holder of the bonds at bar are in full force and effect" and that they "have neither been nullified nor superseded as valid existing laws". (p. 7.)

No State law or decision permitting respondent to escape performance of its trust duties to petitioner,

as clearly and unequivocally construed in *Moody v. Provident,* 12 Cal. (2d) 389, or decision modifying the ruling in *El Camino v. El Camino,* 12 Cal. (2d) 378, that respondent is the alter ego of the sovereign State itself, has been offered by respondent.

These State decisions hold that neither suit nor execution will lie against any revenues or other property of respondent, because it is property owned by the State. Hence the prosecution of this proceeding by respondent constitutes a suit by the State of California, the real party in interest, against petitioner, a *cestui que trust.*

It appears from the following argument submitted in the brief signed by Honorable Robert H. Jackson, as Attorney General of the United States, filed with this Court in the *Bekins* case (supra), that the supremacy of the State's tax power over the bankruptcy power, was clearly recognized:

> "The taxing agency, of course, *is subject to the full control of the State, and its powers are only those granted by the State.* Unless those powers, expressly or by implication, include authority to compose its debts and to invoke the jurisdiction of the bankruptcy court, the taxing agency can not seek the benefits of the Act of August 16, 1937. Not only, therefore, is the choice of the taxing agency wholly voluntary, but *it must necessarily be made subject to the provisions of the State law.*" (Italics ours.)

Respondent does not even suggest that there is anything in the State Constitution or law creating re-

spondent and prescribing its powers and duties which authorizes the annulment of the bonds at bar or the exercise of jurisdiction by a Federal Court to curb directly or indirectly the taxes payable to it.

Nothing contained in Sections 81 to 84 of the Bankruptcy Act supersedes or sets aside the provisions in Section 64(a), which exclude State tax claims from jurisdiction by this Court.

Respondent does not suggest that its fulfillment of the continuing trust obligation to levy and collect the direct taxes required by the law of its creator would violate any statute or constitutional provision.

In *U. S. v. Anderson-Cottonwood Irr. Dist.*, 19 Fed. Supp. 740, the Court said:

> "Rather than making the land within the district security for the bond issue in proportion to the benefits conferred, the California Legislature saw fit to delegate to the district its power to levy yearly assessments upon the land * * * This was a delegation of a part of its taxing power, and the validity of the exercise of that power by the district *must be measured by the same yardstick as though it were being exercised by the State.*" (Italics ours.)

In *von Hoffman v. Quincy*, 4 Wall. 535, this Court said:

> "The power (of taxation) given becomes a trust which the donor cannot annul and the donee is bound to execute; and neither the State nor the corporation can any more impair the obligation of the contract in this way, than in any other."

It is well settled that any conduct of a State Legislature that detracts in any way from the value of its own contracts is inhibited by the Constitution.

State of Louisiana v. New Orleans, 102 U. S. 203;

Edwards v. Kearzey, 96 U. S. 595, 607;

Ex parte Virginia, 100 U. S. 339, 347;

Iowa Des Moines Bank v. Bennett, 284 U. S. 239, 245;

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Wood v. Lovett, 313 U. S. 362;

Wyandotte County v. Gen. S. Corp., 157 Kans. 64, 138 Pac. (2d) 479;

Bates v. Gregory, 89 Cal. 387.

It is also well settled that neither consent nor submission by a State can enlarge the powers of the Congress. Therefore the power of Congress to enact laws stemming from the bankruptcy clause is not a power that can be either created or enlarged by the consent of any State, because its power under this clause is "paramount and supreme and may be so exercised by Congress as to exclude every competing or conflicting proceeding in state or federal tribunals".

Kalb v. Feuerstein, 308 U. S. 433.

There is, therefore, a serious conflict presented by the adjudication of the Fifth Circuit in the case of *Rittenoure v. Charlotte County,* 109 F. (2d) 476, and again in *Green v. City of Stuart,* 135 F. (2d) 33 (petition for certiorari and for a rehearing denied by this

Court), where it was held, that Chapter IX "is a special exercise of the bankruptcy jurisdiction, *is dependent on state consent, and is limited to that consent*". (Italics ours.)

This Court later said in *Faitoute v. Asbury Park*, 316 U. S. 502, that jurisdiction exists under Chapter IX "* * * only in a case where the action * * * is authorized by state law".

In other Circuits the Courts have construed the amended Chapter IX otherwise, pointing out that it does not make State consent a prerequisite to jurisdiction, and holding that no State consent is necessary.

In re So. Beardstown Dr. Dist., 125 F. (2d) 13;
In re Summer Lake Irr. Dist., 33 Fed. Supp. 504.

The Legislatures of many States have also "consented" to repeal or compromise the obligation of taxpayers to the State and its local governments. A few such enactments denounced as utterly unconstitutional appear in the following cases:

Waterville v. Eastport, 8 Atl. (2d) 898 (Me.);
Day v. Ostergard, 21 Atl. (2d) 586 (Pa.);
Wilentz v. Hendrikson, 38 Atl. (2d) 199 (N.J.);
Biggs v. Beeler, 173 S. W. (2d) 144 (Tenn.).

The Constitution of the State of California in Article IV, Section 31, clearly and unequivocally prohibits the Legislature from consenting to anything that would result in the escape of the payment of taxes, as follows:

> "The Legislature shall have no power * * * to make any gift *or authorize the making of any gift,* of any public money or thing of value to any individual, municipal or other corporation whatever; * * *" (Italics ours.)

That there is a limit upon the power of a State to "consent" to the jurisdiction of a federal bankruptcy court, was made clear by this Court in its *U. S. v. Bekins* case, supra, when it said:

> A state may "give consents where that action would not contravene the provisions of the Federal Constitution."

Therefore, if the final decree depends on State consent, the Chapter 72 of California Statutes 1939 can supply no valid consent, because it attempts to authorize the Congress to make a gift of public money that the State has pledged and dedicated "for the uses and purposes" of the Irrigation District Act, among which is the fulfillment of the trust obligation to petitioner, as an owner and holder of unpaid bonds, annulled by the final decree.

That this will be the result, if the final decree stand, is pleaded in the petition, and not denied by respondent:

> "The sole beneficiaries of the decree, if it stand would be those holding land-titles, who are without any 'vested right' in the premises, and who, as taxpayers have no contract with the state." (p. 23.)
>
> *Tulare I. D. v. Shepard,* 184 U. S. 1.

With regard to the question asked by respondent as to whether the final decree "did or accomplished any more than is provided for in Sub. f, Sec. 83", the answer is that it did more than that, because of the 12-month time limitation inserted in the decree, which is not authorized, and which limitation is not contained in the final decree of Glenn-Colusa Irrigation District involved in the case of *Mason v. Glenn-Colusa I. D.*, Petition No. 412, October 1944 Term, in this Court. (R. 85.)

Petitioner respectfully submits that the provisions of Sub. f, Section 83, may not be invoked to nullify and disregard the provisions of Subs. c and i, Section 83. The State law governing the right of respondent to any discharge from its debts or liabilities are fully covered in the California Stats. 1903, p. 3; Stats. 1909, p. 139; Stats. 1911, Ex. Sess., p. 118; Stats. 1913, p. 39; Stats. 1915, p. 859.

Section 8 of Stats. 1909, p. 139, follows:

> "The court in its decree shall have power to make the orders necessary to carry out said proposition for the discharge of the indebtedness and the distribution of the property of said district, including the right to apportion any indebtedness found due, and to declare said portions liens upon the various parcels and lots of land within the district, and may decree a sale of the assets in such manner as may effectuate said proposition and as the said court may judge best * * * and may provide for conveyance of said irrigation system, including dams, reservoirs, canals, franchises and water rights, and also of

any other assets of the district, including lands sold thereto and the assessments due it."

Happy Valley v. Thornton, 1 Cal. (2d) 325.

Most of those holding bonds issued by respondent accepted $505 per $1000 bond cash in 1935 rather than face litigation. They might have given their bonds away. The law does not permit anything that other bondholders have done to affect the contract in the bonds owned by petitioner. The Courts have so decided.

Selby v. Oakdale I.D., 140 Cal. App. 171;
Meyerfeld v. S.S.J.I.D., 3 Cal. (2d) 409;
Co. of San Diego v. Hammond, 6 Cal. (2d) 709;
Provident v. Zumwalt, 12 Cal. (2d) 365;
State v. Brooklyn, 49 N.E. (2d) 684 (Ohio).

Respondent has not denied or even replied to the basic questions raised by petitioner, nor to the contentions set down in "Conclusion", pages 20 et seq., as follows:

"* * * if there is any species of local government bond still immune from federal interference, whether under the tax clause or the bankruptcy clause, it must be the bonds at bar. * * * It was State action that authorized the exercise of the State's borrowing power, prescribed the powers and duties of Respondent to tax and administer all the land within its boundaries, provided tax exemption for all district owned property and land, designated all revenues and property of the district as State owned, but dedicated for the uses and purposes of the Act, including the fulfillment of contractual obligations,

according to the trust. * * * There is an unfulfilled contract made by the State in the bonds owned by Petitioner, which the final decree here challenged annuls."

Petitioner does not seek to have this Court reverse its former decisions, but only to reaffirm or reverse the doctrine of immunity as it affects the bonds at bar, which bonds the final decree destroys.

The true character of California Irrigation District bonds, and their immunity from the bankruptcy clause has been thoroughly considered and decided by this Court, as pointed out in *Brush v. Comm.,* 300 U. S. 352, 366-369, and nothing said in the *Bekins* case, supra, purports to reverse that adjudication. The *Bekins* case did not reverse the principle of constitutional law announced in the *Ashton* case. It reaffirmed it.

In the *Ashton* case, supra, this Court said:

"The difficulties arising out of our dual form of government, and the opportunities for differing opinions concerning the relative rights of the state and national government are many; but for a very long time this Court has adhered steadfastly to the doctrine that the taxing power of Congress does not extend to the States or their political subdivisions. The same basic reasoning which leads to that conclusion, we think, requires like limitation upon the power which springs from the bankruptcy clause."

In *Texas v. White,* 7 Wall. 700, 725, Chief Justice Chase said in strong and memorable language that

> "the Constitution in all of its provisions, looks to an indestructible Union, composed of indestructible states."

In *Lane County v. Oregon,* 7 Wall. 76, he said:

> "The people of the United States constitute one nation, under one government; and this government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each state compose a state having its own government, and endowed with all the functions essential to separate and independent existence."

In *Coyle v. Smith,* 221 U. S. 559, this Court said:

> "To this we may add that the Constitutional equality of the states is essential to the harmonious operation of the scheme upon which the Republic was organized."

The States' power to borrow money and to levy direct taxes on the value of land to repay money borrowed, whether exercised directly or through an instrumentality of the State to whom its sovereign powers are delegated are not powers that are subordinate to, or "a part" of any powers delegated to the Congress, but are State sovereign powers of equal dignity, indestructible, equally important, and in their own demesne equally supreme.

> *Pollock v. Farmers L. & T. Co.,* 157 U. S. 429, 583, 158 U. S. 601, 630.

The powers of the separate States within their own spheres are as exclusive as are the sovereignty and

independence of the general government within its sphere.

Cooley, Const. Lim., 7th Ed., p. 64;
U. S. v. B. & O. R. Co., 17 Wall. 322, 327;
License Tax Cases, 5 Wall. 462, 471;
Adirondack Ry. v. N. Y., 176 U. S. 335.

The Congress, in approving the Constitution of West Virginia, a State born of the Civil War, affirmed the principles regarding State rights. That Constitution says:

> "The Government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the States, are reserved to the States or to the people thereof. *Among the powers so reserved by the States is the exclusive regulation of their own internal government and police;* and it is the high and solemn duty of the several departments of government, created by this Constitution, to guard and protect the people of this State, from all encroachments on the rights so reserved." (Art. 1, Sec. 2.) (Italics ours.)

The proponents of 11 U.S.C.A. §§ 401-404 clearly understood and admitted that "this act would be constitutional as to some classes of units in some States and not be constitutional as to that same class in another State". (Hearings, House Comm. on the Judiciary, 75th Cong., 1st Sess., on HR 2505, 2506, 5403, 5969, March 17, 1937, Testimony of Congressman Wilcox on page 148.)

The Federal Income Tax Law is also constitutional, but it can not extend to the bonds issued by a State or

its political subdivisions to effectuate the borrowing power of the State.

A quite similar State vs. Federal question reached the boiling point in 1933 in Germany. It was resolved by the Reichstag on January 30, 1934, by the enactment of the German "Reconstruction Act" (Neuaufbaugesetz) which provided in the second article, "The sovereign rights of the States are transferred to the Reich", and in the third article, "The State governors come under the control of the Reich Minister of the Interior".

In the light of the tax burdens that this global war will make inescapable, and the strains and stresses they must create, the reasoning of this Court in *Cheathem v. Norvekl,* 92 U. S. 561, supplies another cogent support of petitioner's stand. It says:

> "If there existed in the courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving the hardship incident to taxation, the very existence of the government might be placed in the hands of a hostile judiciary."

The final decree, as applied, does in both legal and practical effect curb the direct ad valorem taxes respondent is obligated to levy and collect to pay the bonds owned by petitioner, hence it is, in effect, judicial "control of the collection of taxes", prohibited by this Court again in *Arkansas Corp. v. Thompson,* 312 U. S. 673.

> "The destruction of our State governments or the annihilation of their control over the local

concerns of the people would lead directly to revolution and anarchy and finally to despotism."
—President Andrew Jackson in 1833.

"If we dwarf the States into mere provinces we will thereby vest all our sovereignty in an absolute central power against which the spirit of liberty has so often, in so many countries struggled in vain."
—President Franklin Pierce in 1854.

Perhaps nobody has put the basic question here better than Henry George, when he said:

"Forms are nothing where substance has gone, and the forms of popular government are those from which the substance of freedom may most easily go * * * The single source of power once secured, everything else is secured. There is no unfranchised class to whom appeal may be made, no privileged orders who, in defending their own rights, may defend those of all. No bulwark remains to stay the flood, no eminence to rise above it. They were belted barons led by a mitred archbishop who curbed the Plantagenet with Magna Charta; it was the middle classes who broke the pride of the Stuarts; but a mere aristocracy of wealth will never struggle while it can hope to bribe a tyrant."

CONCLUSION.

It has been steadfastly recognized by this Court that a dual sovereignty can not be preserved if one of the parties to the relation is permitted to exercise

control over the borrowing or taxing power of the other, when exercised. Also, that if the existence of the power is once conceded, it would be impossible to draw the line or to distinguish the abuse of the power from its use.

While a Court is not to be stampeded by forebodings deemed by it to have no relation to the basic question raised in a case, the mounting competition between the Nation and the States for revenues, and the demands for Federal interference, through fiscal, tax or bankruptcy control of the States and their instrumentalities are sufficiently familiar to be reckoned more as history than prophecy.

If the final decree stand, as applied by the Court below, the doctrine of immunity will have suffered as serious a wrench as though the same bonds had lost their immunity from the tax clause, and the trend towards "an absolute central power against which the spirit of liberty has so often, in so many countries struggled in vain" will have won a decisive victory.

President Lincoln, in his First Inaugural Address quoted from a plank of the platform on which he was elected, as follows:

> "*Resolved,* That the maintenance inviolate of the rights of the States, and especially the right of each State to order and control its own domestic institutions according to its own judgment exclusively, is essential in that balance of power on which the perfection and endurance of our political fabric depend.* * *"

Abraham Lincoln again said, in a letter to his law partner Gridley:

> "The land, the earth that God gave to man for his home, sustenance and support, should never be the possession of any man, corporation, society, or unfriendly government, any more than air or water, if as much. An individual, or company, or enterprise requiring land should hold no more than is required for their home and sustenance, and never more than they have in actual use in the prudent management of their legitimate business, and this much should not be permitted when it creates an exclusive monopoly.
>
> All that is not so used should be held for the free use of every family to make homesteads, and to hold them as long as they are so occupied.
>
> A reform like this will be worked out sometime in the future. The idle talk of foolish men, that is so common now, on 'abolitionists, agitators, and disturbers of the peace', will find its way against it, with whatever force it may possess, and as strongly promoted and carried on as it can be by land monopolists, grasping landlords, and the titled and untitled senseless enemies of mankind everywhere."
>
> ("Abraham Lincoln. The Men of His Time." by Robt. H. Browne, M. D., Vol. II, page 89. Blakely-Oswald Printing Co., Chicago.)

It is respectfully submitted that this petition for a rehearing should be granted, and that a writ of certiorari be issued out of and under the seal of this

Honorable Court as prayed for in the petition for a writ of certiorari herein.

Dated, San Francisco, California,
November 8, 1944.

Respectfully submitted,
J. RUPERT MASON,
Petitioner in Propria Persona.

CERTIFICATE.

I, J. Rupert Mason, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Dated, San Francisco, California,
November 8, 1944.

J. RUPERT MASON,
Petitioner in Propria Persona.